

JAN 23 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS OVIA HAITHCOCK,

Petitioner - Appellant,

v.

M. VEAL, Warden,

Respondent - Appellee.

No. 07-55359

D.C. No. CV-06-00100-NAJ

ORDER \*

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Argued and Submitted January 13, 2009  
Pasadena, California

Before: TROTT, KLEINFELD and IKUTA, Circuit Judges.

The district court's order denying stay and abeyance of Thomas Ovia Haithcock's federal habeas corpus action is not a final, appealable order under 28 U.S.C. § 1291. The collateral order doctrine does not apply in this case because Haithcock will be able to appeal the denial of the motion for stay and abeyance

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

after the district court disposes of Haithcock's petition. See Olvera v. Giurbino, 371 F.3d 569, 574 (9th Cir. 2004) (reviewing a denial of a motion for a stay and abeyance on appeal after the underlying petition was dismissed). Because Haithcock only appeals the order denying stay and abeyance, we dismiss Haithcock's appeal for lack of appellate jurisdiction.

**SO ORDERED.**